IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

Smt.Raj Kumari Paliwal Vs. Rajasthan Financial Corporation and ors.

D.B.SPECIAL APPEAL (WRIT) NO.823/1994 AGAINST THE JUDGMENT OF LEARNED SINGLE JUDGE DATED28.7.1994 IN S.B.CIVIL WRIT PETITION NO.6697/1992.

Date of Order ** February 15, 2007

PRESENT
HON'BLE MR.SHIV KUMAR SHARMA
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Manoj Sharma, for the appellant-petitioner.
Mr. N.S.Chouhan for Mr.R.D.Rastogi,for the respondents.

BY THE COURT:

1. This appeal is directed against the Judgment of learned Single Judge dated 28.7.1994 disposing of the writ petition.

2. The brief controversy is as to whether the appellant-petitioner was entitled to the exemption from payment of stamp duty on the agreement/conveyance deed executed by the Rajasthan Financial Corporation of an industrial unit in an auction held by it under Sec.29 of the State Financial Corporation Act, 1951.

3. Making his submissions, learned counsel for the appellant-petitioner relied upon Annex.8-A, notification

dated 27.1.1988 whereby the State Government in exercise of powers conferred under Sec.9 of the Indian Stamp Act, 1899 as adapted to Rajasthan by the Rajasthan Stamp Law (Adaptation) Act, 1952, the State Government remitted the stamp duty chargeable under the said Act “in respect of the transfer deeds of Sick Industrial Units certified as such by a central or state level financial institution of by the General Manager of the concerned District Industries Centre, keeping in view the definition of sick units adapted by I.D.B.I.”

4. Learned counsel submitted that since the unit in question was a sick unit and Rajasthan Financial Corporation sold the said unit to the appellant-petitioner in an auction under Sec.29 of the Act, no stamp duty was payable on such agreement/conveyance deed in view of the said notification.

5. Learned counsel appearing for the respondents however contested this position and submitted that there is no certificate issued by either Rajasthan Financial Corporation or District Industries Centre declaring the unit in question to be a sick unit and, therefore, the petitioner's case did not fall within the four corners of the said notification Annex.8-A dated 27.1.1988 and, therefore, the question of exempting the stamp duty could not arise.

6. Having heard learned counsel, upon perusal of the relevant record, and the impugned judgment of learned Single Judge, we are satisfied that there is no force in the present appeal. Learned counsel for the appellant could not point out any document or a certificate declaring the industrial unit M/s. Mohan Metals Industries, Kota as a sick unit by any competent body as stipulated in the notification Annex.8-A.

7. Learned counsel for the appellant relied upon the Judgment reported in JT 1995(2) S.C.626 (***M/s. Isha Marbles Vs. Bihar State Electricity Board and Anr.***) wherein the Hon'ble Supreme Court held that the electricity dues of the erstwhile owner of the unit could not be insisted to be recovered from the auction purchaser from the said Financial Corporation seeking re-connection of the power supply. We see no parity of facts & circumstances to apply the said judgment to the facts and circumstances of the present case where the question is only with regard to exemption from stamp duty in terms of notification dated 27.1.88. The judgment cited by the learned counsel for the appellant is distinguishable on the face of it.

8. The learned Single Judge has disposed of the writ petition to the effect that the respondents would consider the claim of the petitioner as to whether the

sickness certificate in terms of notification dated 27.1.88 could be issued or not. If the certificate can be issued then they would not insist on the stamp duty and if the certificate cannot be issued for any reason, the petitioner shall make the payment of balance 90% of the amount along with interest @14.5% and respondents were directed to decide the matter within fifteen days.

9. We see no reason as to why the petitioner has approached this court in appeal against such a direction by the learned Single Judge where he could have satisfied the respondents and convinced them on the basis of material available on record for issuance of requisite certificate in terms of notification Annex.8-A dated 27.1.88. Since no document or certificate is on record declaring the unit in question as sick unit, no benefit of exemption from stamp duty can be granted to the appellant-petitioner at this stage, in terms of the said notification.

10.The appeal is wholly devoid of merit and same is hereby dismissed. No order as to costs.

(Dr.VINEET KOTHARI),J. **(SHIV KUMAR SHARMA),J.**

Srawat/-